

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TEVA PHARMACEUTICALS USA, INC.,)	
TEVA PHARMACEUTICAL INDUSTRIES LTD.,)	REDACTED PUBLIC
and NOVOPHARM, LTD.,)	VERSION
)	
Counterclaim Plaintiffs,)	C.A. No. 02-1512 (SLR)
v.)	
)	CONSOLIDATED
ABBOTT LABORATORIES,)	
FOURNIER INDUSTRIE ET SANTÉ, and)	
LABORATOIRES FOURNIER S.A.,)	
Counterclaim Defendants.)	
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IMPAX LABORATORIES, INC.,)	
)	
Counterclaim Plaintiff,)	C.A. No. 03-120 (SLR)
v.)	
)	CONSOLIDATED
ABBOTT LABORATORIES,)	
FOURNIER INDUSTRIE ET SANTÉ, and)	
LABORATOIRES FOURNIER S.A.,)	
)	
Counterclaim Defendants.)	
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IN RE TRICOR DIRECT PURCHASER)	C.A. No. 05-340 (SLR)
ANTITRUST LITIGATION)	
)	CONSOLIDATED
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THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	
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IN RE TRICOR INDIRECT PURCHASER)	C.A. No. 05-360 (SLR)
ANTITRUST LITIGATION)	
)	CONSOLIDATED
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THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	

DEFENDANTS' JOINT APPENDIX
IN SUPPORT OF SUMMARY JUDGMENT MOTIONS

VOLUME III OF III

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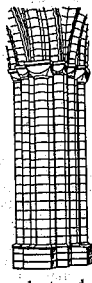
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MERRIAM-WEBSTER INC., *Publishers*
SPRINGFIELD, MASSACHUSETTS, U.S.A.

cluster cup

cluster cup *n*: AECIUM
cluster-cup stage *n*: the aecial stage of a rust fungus
clustered *adj* [ME, fr. *cluster* + *-ed*]: 1: formed or located in clusters — compare **SOLITARY** 2: composed of or apparently composed of several similar elements clustered together (a ~ pier) (a ~ column)
clustered bluet *n*: a weed (*Oxalis corniculata*) having buttonlike clusters of tiny flowers
clustered poppy mallow *n*: a perennial herb (*Callirhoe triangulata*) of the prairie regions of the U.S. with purple flowers in panicle clusters



clustered pier

cluster fig *n*: an East Indian fig (*Ficus glomerata*) often planted as a shade tree having tapering leaves, small clusters of red fruit, and astringent bark — called also **cluster fig**
cluster flower *n*: a plant of the genus *Cestrum*
cluster fly *n*: a large dark-brown fly (*Pollenia rudis*) related to the bluebottles and often gathering in large clusters in attics and other sheltered places during cool autumn weather
cluster gear *n*: a set of gears of different sizes mounted as a unit on the same shaft — called also **gear cluster**

cluster-ing *adv*: in a clustering manner
cluster pepper *n*: a hot pepper (*Capiscum frutescens*) with slender elongated bright red and extremely pungent fruits borne erect in clusters 2: the fruit of a cluster pepper
cluster piles *n*: piles driven in a close bundle and usually lashed together with chains or steel bands
cluster pine also **cluster fir** [so called fr. its cones]: a pyramidal pine (*Pinus pinaster*) of the Mediterranean region with reflexed bud scales and needles in pairs
clusters *pl* of **CLUSTER**, *pres 3d sing* of **CLUSTER**
cluster variable *n*: a short-period variable star of Cepheid characteristics and a period of light fluctuations not longer than a day orig. found in globular clusters but abundant elsewhere in the Milky Way galaxy — called also **cluster-type Cepheid**

cluster wheat *n*: CLUB WHEAT
clutch *v* [ME *clucchen*, fr. OE *clucchen*, fr. *cluc*, akin to OFris *kleisje* spear, Sw *kljka* flock, crotch, MHG *kluck* ON *klakk* lump, Mfr *glacc* hand — more at **CLING**] *vt* 1: to seize, grip, or hold with the hand or claws usu. strongly, tightly, or suddenly (sleeps ~ with his musket) 2: to seize tightly (S.V. Benet) (~ed his arm fiercely) 3: to hold or try to retain control or possession of (the ~ of the power) 2: to close tightly: CLENCH (his hands) ~ *vi* 1: to seek to hold or retain possession (~ed at her son's devotion — Andrea Parker) 2: take immediate advantage or make immediate use (as of an idea or an opportunity) — often used with *at* (~ed at remedies that her calmer self would have put by — H.O. Taylor) 3: to operate a clutch (sense 3) *syn* see **TAKE**

clutch *n* 1: of a woman's coat: lacking fasteners and suitable for holding closed with the hand or arm 2: of a woman's handbag: lacking handles and of a size and shape suitable for clasping in the hand

clutch *n* -es [ME *clouche*, *clouche*, alter. (influenced by ME *clucchen* to clutch) of *clouche*, akin to OE *clucan* to clutch] 1: a rabbit or a hand in the act of grasping or clutching 2: the act of grasping or clutching 3: control, power, or possession esp. of the army or the navy (the ~ of the army — Irwin Shaw) (the ~ of circumstance — W.E. Henley) — often used in pl. (in the ~es of a desperate infatuation — Delmore Schwartz) 4: the act of grasping, holding, or restraining: GRASP, GRIP (the gravitational ~ of the earth — N.Y. Times) 5: a device for gripping an object, as at the end of a chain or tackle 3: a coupling used to connect and disconnect a driving and a driven part of a mechanism esp. one that permits the former part to engage the latter gradually and without shock — see **BAND CLUTCH**, **FRICITION CLUTCH**, **MAGNETIC CLUTCH**, **DISK CLUTCH**, **FRICITION CLUTCH**, **MAGNETIC CLUTCH**, **FLUID CLUTCH** 4: a lever operating such a clutch 4: a tight or critical situation (as when the outcome of a game is at stake) 5: PINCH (a batter's able to come through with a hit in the ~) (a good ~ hitter)

clutch *n* -es [alter. of *clutch*] 1: a nest of eggs or a brood of chicks 2: a group of offspring produced at a birth 2: the eggs laid by a bird at regular consecutive intervals without intervening longer pauses 3: GROUP, BUNCH (a whole ~ of people trooped in together — Mollie Panter-Downes)

clutch-man *n*: *clutchman*, *pl* **clutchmen** [clutch + man] 1: one who operates a clutch; *specif*: one operating a clutch on a beet-slicing machine 2: a casual also **cutman**

cluth-er *n*: *cluthers*, *pl* **cluthers** [var. of *clutter*] *dialect* Brit 1: a large quantity 2: CLUSTER, BUNCH

clut-ter *v* [ME *cluteren* to clot, fr. *clot* + *-eren* (freq. suffix) — more at **CLOT**] *vt* 1: to crowd together in disorder 2: to fill or cover with things in disorder or scattered at random or with things that impede movement or action or reduce effectiveness (a ~ed room) (an author ~ed his explanations with digressive evidence that delays the reader — G.W. Sherburn) — often used with *up* (the roads of France ~ed up with refugees — Henri Peyre) *vi* 1: now chiefly *dialect* 2: to run together in knots or confused groups 2: *archaic* 3: to make a confused noise: BUSTLE 2: *archaic* 4: to speak confusedly or inarticulately: jumble words

clutter *n* -s 1: a crowd or confused mass or collection (a ~ of shops and tenements): a mass of disorderly or distracting objects or details (pure and noble design, unspoiled by ~ or ornament — E.K. Brown) (steaming ~ seaward among a ~ of sister ships — K.M. Dodson) 2: LITTER, DISORDER (photographs ~ed up amid a ~ of china ornaments — Hamilton Basso) (pushing aside the ~ on the table — Harriet LaBarre) 3: the visual indication on a radar screen of interference or echo from objects other than the target tending to obscure target indication 4: compare **SEA RETURN** 2: now *dialect*: turmoil or confusion of movement or activity: DISTURBANCE, HUBBUB (confused noise [ladies who were apt to make the greatest ~ upon such occasions — Jonathan Swift]) *syn* see **CONFUSION**

clut-ter-er *n*: *clutterer*, *pl* **clutterers** 1: one whose speech is defective by reason of cluttering

cluttering *n* -s: a speech defect in which phonetic units are dropped, condensed, or otherwise distorted as a result of overly rapid agitated utterance

clay *n* [perh. fr. LG *kleien* to scratch, fr. MLG; akin to Flem *klauwen* to scratch, steal, G *klauen*, OHG *klāwa* claw — more at **CLAW**] *slang*: SEIZE, STEAL

clay *n* -es [perh. fr. *clay* *slang*: POCKET, PURSE] 1: CLAYDALE 2: CLAYDALE

claydale *n*: a heavy draft horse of the valley in Scotland where it originated 2: a heavy draft horse of a breed orig. from the Clydesdale, Scotland, distinguished by a dark brown or black coat, white blaze and stockings, and heavy feathering about the fetlock

claydale terrier *n*, *usu* *cap* C [fr. *Clydesdale*, valley in Scotland where it originated]: a small terrier of a breed resulting from selective breeding of the Skye terrier and distinguished by tiny erect ears, a long and silky coat, and short legs

clay-side *n*: *clay side*, *adj*, *usu* *cap* C [fr. *Clyde*, river in Scotland + *-side*]: of or relating to the region along the Clyde in Scotland; *esp*: having to do with shipbuilding, the chief industry of this region

clay-sider *n*: *clay sider*, *pl* **clay siders** 1: a native or resident of the region along the Clyde in Scotland 2: a tuberculous lymph gland in cattle 2: *clay siders*, *pl*: tuberculous of the bovine lymphatic system

clay-ne-lia *n*: *claynelia*, *pl* **claynelias** 1: a genus of polychaete worms common in shallow waters of the northern Atlantic coasts — see **BAMBOO WORM**

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claymenid *n* -s: a claymenid ammonoid
claymenid *n*: *claymenid*, *pl* **claymenids** 1: a family of extinct geovian ammonoids having the siphuncle at the dorsal margin of the whorls

claype *n*: *claype*, *pl* **claypes** 1: a family of the order *Clypeastrina* 2: a family of the order *Clypeastrina* 3: a family of the order *Clypeastrina* 4: a family of the order *Clypeastrina* 5: a family of the order *Clypeastrina* 6: a family of the order *Clypeastrina* 7: a family of the order *Clypeastrina* 8: a family of the order *Clypeastrina* 9: a family of the order *Clypeastrina* 10: a family of the order *Clypeastrina* 11: a family of the order *Clypeastrina* 12: a family of the order *Clypeastrina* 13: a family of the order *Clypeastrina* 14: a family of the order *Clypeastrina* 15: a family of the order *Clypeastrina* 16: a family of the order *Clypeastrina* 17: a family of the order *Clypeastrina* 18: a family of the order *Clypeastrina* 19: a family of the order *Clypeastrina* 20: a family of the order *Clypeastrina* 21: a family of the order *Clypeastrina* 22: a family of the order *Clypeastrina* 23: a family of the order *Clypeastrina* 24: a family of the order 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IMS HEALTH

Business Watch

1999 IN REVIEW

The industry hits new heights at the close of the Millennium

by Katherine Friedman, Katrina Kulp, and Mary Berryann



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1999 AT A GLANCE

- ▶ The industry recorded a fourth consecutive year of double-digit growth with sales up 19 percent.
- ▶ Sales topped \$125 billion, double 1995's \$64 billion, with growth spurred primarily by higher drug utilization.
- ▶ Anti-ulcerants remained the sales leader, with cholesterol reducers taking over second spot from specific neurotransmitter modulators.
- ▶ Prilosec remained the sales leader, with Lipitor moving into second position.
- ▶ Searle's Celebrex was 1999's star new product, with the 12th highest sales volume in its launch year.

The U.S. pharmaceutical industry closed the millennium by soaring to new heights with an unprecedented 19-percent growth. By the end of 1999, the industry had capped the \$125 billion¹ mark in its fourth straight year of double-digit growth, and had virtually doubled its 1995 total of \$64 billion. Consumers filled a staggering 2.8 billion prescriptions², a nine-percent increase over 1998. The \$20.3 billion expansion was driven primarily by higher drug utilization, and while new products did not impact the market as heavily as in 1998,

¹ Represents purchases of prescription pharmaceutical products. Reflects price at trade-level, i.e., sale from wholesaler to chain warehouse, food store warehouse, independent drug store, mail order, non-federal hospitals, federal facilities, clinics, long-term care facilities and HMOs.

² Reflects prescriptions dispensed through chain, independent and food store pharmacies, long-term care facilities and mail order channels.

there was one new star on the horizon — Searle's Celebrex — which augmented the company coffers by \$1.4 billion.

Channels of Distribution

Sales

Retail pharmacy channels accounted for nearly 65 percent of U.S. pharmaceutical purchases, about the same as in 1998. Chain stores were responsible for \$48 billion or 38 percent of the total; independents held a distant second place at \$23 billion and food stores trailed with \$10 billion. Approximately half of the institutional sales (\$30.6 billion) were attributable to non-federal hospitals, followed by clinics and long-term care facilities (see Exhibit 1, right). Mail order pharmacy purchases accounted for \$13 billion to garner a 10-percent share.

All retail outlets posted healthy purchase increases, with chains and food stores growing by more than 20 percent, while independents expanded by about 15 percent. Clinics and non-federal hospitals in the non-retail market increased sales by approximate \$2 billion; sales to clinics have grown by 26.5 percent compared to non-federal hospitals, which increased by 16 percent. Meanwhile, mail order also increased by \$2 billion for 23-percent growth, and HMOs continued their three-year downward trend, declining by 4.2 percent to \$1.5 billion (see Exhibit 2, right).

Prescriptions

There were no major shifts in distribution during 1999, although chains and food stores showed slight increases in share at the expense of independents. Chain stores dispensed 1.5 billion prescriptions, for a market share of 52.9 percent. Food stores increased by 51.6 million to reach 357.4 million, earning a 12.7 percent share. Independents, despite stronger growth than in 1998, lost market share, dropping 1.2 points to close the books with 25.6 percent for 723.7 million dispensed pre-

Exhibit 1

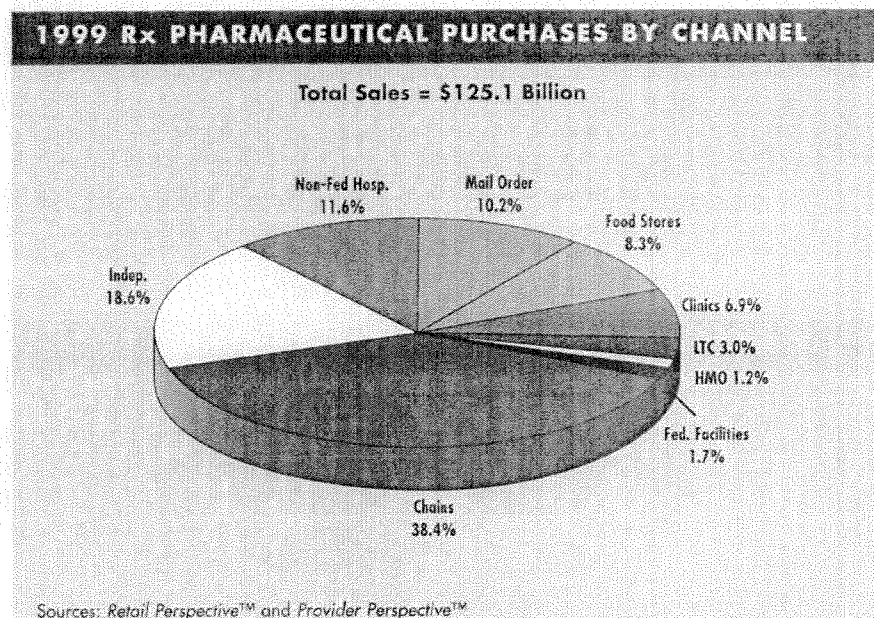
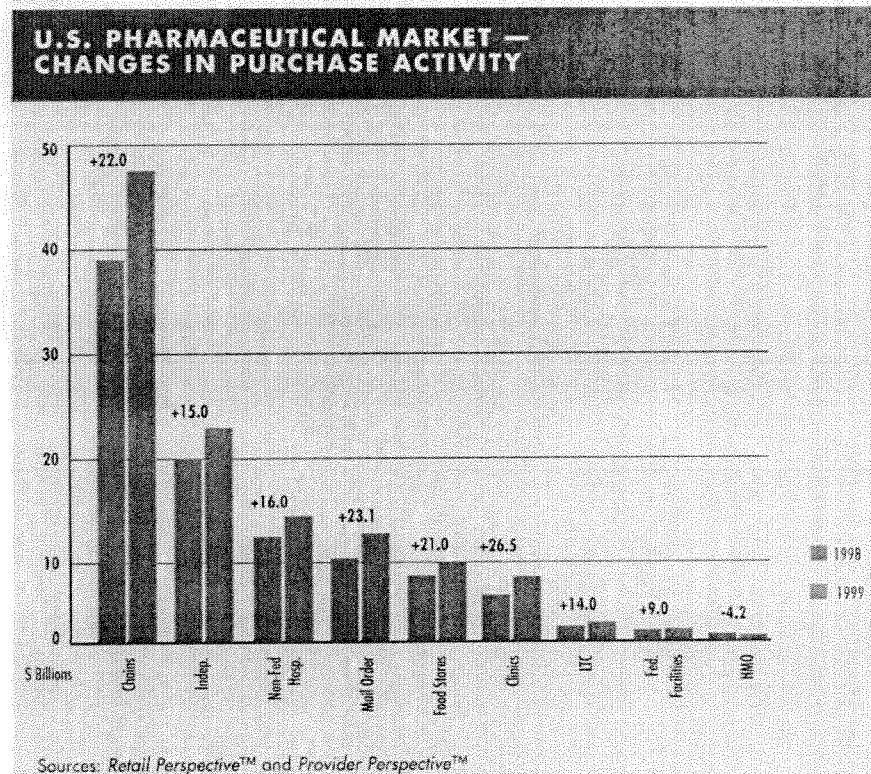


Exhibit 2



IMS HEALTH BUSINESS WATCH

Exhibit 3

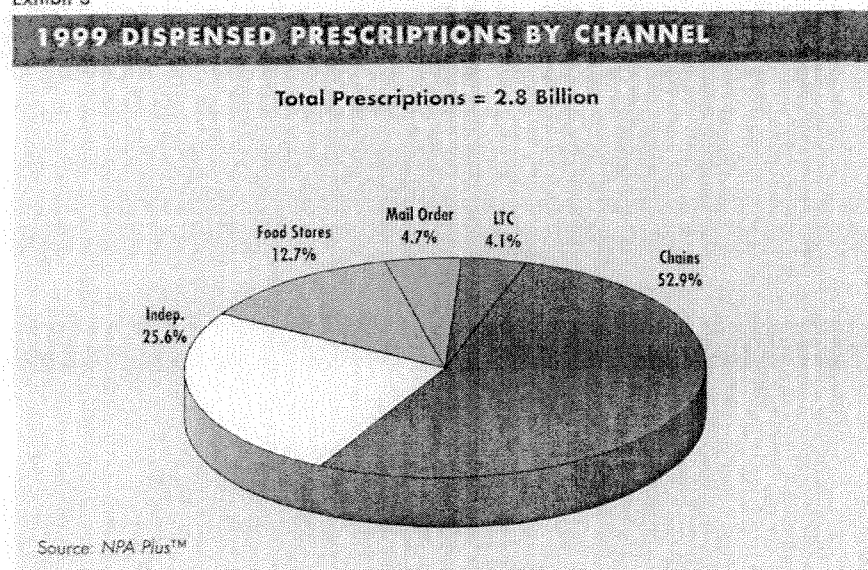
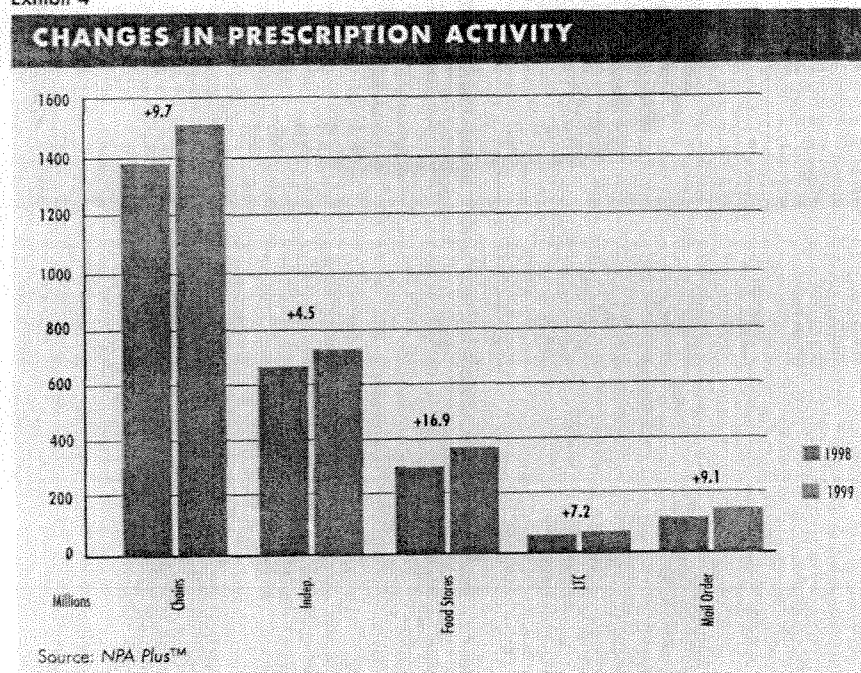


Exhibit 4



scriptions. Long-term care facilities and mail order accounted for the remaining 8.8 percent (see Exhibit 3, above).

Each retail channel recorded a growth rate two to three points higher than in 1998. On the other hand, long-term

care grew by seven percent, whereas the 1998 growth was at one percent. Meanwhile, mail order prescription increases slowed slightly from 12 percent in 1998 to nine percent this year (see Exhibit 4, above).

Leading therapeutic classes**Sales**

The top-three classes remained firmly entrenched in their leadership positions, while another blasted onto the top-20 chart (see Exhibit 5, p. 44).

- Anti-ulcerants grew by 19 percent to top the \$8.5 billion mark. AstraZeneca's Prilosec and TAP's Prevacid, two of the top-five products, lead the class with respective 49 and 28-percent shares. Prilosec grew by 21 percent to \$4.2 billion, while Prevacid posted an impressive 67-percent gain to \$2.4 billion (see Exhibit 8, p. 48). The older products in the class, Merck's Pepcid, Lilly's Axid, and Glaxo's Zantac have suffered as a result.
- The statin class moved into second place, growing by 24 percent to \$7.2 billion, and also boasts three products in 1999's top-20 list. Warner-Lambert's Lipitor took the market by storm in 1997, and has sustained its meteoric rise to own 41.4 percent of the class in 1999, with sales of \$3 billion. Both Merck's Zocor and Bristol-Myers Squibb's Pravachol have not only slipped in the overall rankings, but have also dropped more than two points in share of class. Meanwhile, sales of Merck's Mevacor, the 1987 pioneer, and Novartis' Lescol declined sharply for the second straight year.
- Specific neurotransmitter modulators were nudged into third place, after an 18-percent increase to just under \$7 billion. Lilly's Prozac, Pfizer's Zoloft, and SmithKline Beecham's Paxil lead the class, and are among the top-10 products. These three products accounted for 90 percent of the market in 1998 and, despite modest growth, their combined share has dipped to 83 percent for 1999. Newer products — Wyeth's Effexor XR and Forest's Celexa — have taken up the slack.

continued on page 44